IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3684 OF 1991

Pawadi Paragonda Danshur)
Occ. Agriculturist, R/a. Gugawad,)
Tal. Jath, Dist. Sangli.) ..Petitioner.

Versus

1. Balaji Narayan Kulkarni, since)
deceased by his heir and legal)
representative Smt. Shantabai)
Balaji Kulkarni r/a. Gugawad,)
Tal. Jath, Dist. Sangli.)
)
2. The Tahsildar,)
Tehsil Jath, Dist. Sangli.)
)
3. The Sub-Divisional Officer,)
Miraj Sub Division, Miraj)
Dist. Sangli.)
)
4. The Collector, Sangli,Dist.Sangli)
)
5. The Additional Commissioner,)
Pune Division, Pune)
)
6. The State of Maharashtra) ..Respondents.

Mr. M.L. Patil for the Petitioner.
Mr. M.V.Sali for the Respondent No.1.
Mr. M.H.Solkar, AGP for the Respondent Nos. 2 to 6.

CORAM : S. A. BOBDE, J.
DATED : 18TH OCTOBER, 2005.

ORAL JUDGMENT.:-

1. The petitioner has challenged the order of the Additional Commissioner, Pune Division, Pune dismissing his Revision. The dispute between the parties is in

relation to land bearing City Survey Nos. 48/1 and 48/2, admeasuring about six hectors.

2. It appears that this point is not resolved by any of the courts below though an application was made on 01.05.1980. It appears that the application dated 01.05.1980 was made in the names of the petitioner-Pawadi Paragonda Danshur and the respondent No.1, who claim for re-grant of land which was reserved by the Government under the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1954. By this application at Exh.'A', the applicants are shown to be the petitioner and the respondent. The application purports to request for regrant of the land in favour of the applicant. However, the copy which is annexed to the petition at Exh.'A', does not show the signature of the respondent but shows the signature of the petitioner only. The oral statement recorded by the Additional Tahasildar suggests that the respondent has signed the said application dated 01.05.1980, who claimed that it is done as a result of a mistake. As observed earlier, this point has not been resolved.

3. This application appears to have granted and the lands in question appear to have re-granted to the petitioner and the respondent by the Upper Tahasildar

in exercise of powers conferred on him by the Collector, Sangli. The order of re-grant is dated 05.05.1980. Thereafter, the said order appears to have been revised by the Special Divisional Officer in exercise of the revisional powers conferred on him by section 257 of the Land Revenue Code. Section 257 reads as follows :-

> 257. Power of State Government and of certain revenue and survey officers to call for and examine records and proceedings of subordinate officers :- (1) The State Government and any revenue or survey officer, not inferior in rank to an Assistant or Deputy Collector or a Superintendent of Land Records, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue or survey officer, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.
>
> (2) A Tahsildar, a Naib-Tahsildar, and a District Inspector or Land Records may in the

same manner call for and examine the proceedings of any officer subordinate to them in any matter in which neither a formal nor a summary inquiry has been held.

(3) If in any case, it shall appear to the State Government, or to any officer referred to in sub-section (1) or sub-section (2) that any decision or order or proceedings so-called for should be modified, annulled, or reversed, it or he may pass such order thereon as it or he deems fit:

Provided that, the State Government or such officer shall not vary or reverse any order affecting any question of right between private persons without having given to the parties interested notice to appear and to be heard in support of such order :

Provided further that, an Assistant or Deputy Collector shall not himself pass such order in any matter in which a formal inquiry has been held, but shall submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit.

4. It is difficult to see how the S.D.O. could exercise this power which can be conferred only on a person not below the rank of Assistant or Deputy Collector or a Superintendent of Land Records. Though this point has been raised by the petitioner, it has not satisfactorily answered by any of the authorities below, neither Collector nor by Additional Collector in revision. This order of the S.D.O. dated 05.05.1980 passed under section 257, without referring to any delegation of powers has been upheld throughout. The authority has arrived at a conclusion that the respondent was in possession of the entire land in question. However, none of the authorities have explained the power to resolve the controversy regarding basic application dated 01.05.1980 which appears to have been made by the petitioner as well as the respondent for regrant of a half share in the land in question. I am of view that this goes to the root of the matter.

5. In the circumstances, I consider it appropriate to set aside the impugned order and remand the matter back to the Collector, Sangli for a decision interalia, on the following two points.

i) Whether the application dated 01.05.1980 was jointly made by the petitioner and the respondent No.1 or;

ii) Whether the S.D.O. had any power to cancelled the regrant as is done by him by the order dated 29.11.1980, or whether the respondent No.1 s' name as a joint applicant is a result of any mistake on his part.

6. After going into the aforesaid issues, the Collector shall decide in whose favour the land in dispute should be re-granted.

7. Rule is disposed of in the above terms.

DT. 18.10.05 (S.A.BOBDE,J)

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